SOH LI KE

v.

LIM AH CHAW

HIGH COURT MALAYA, JOHOR BAHRU
MAHADEV SHANKAR J
[CIVIL SUIT NO. 488 OF 1983]
29 MAY 1985

LAND LAW: *Removal of caveats - Burden of proof on caveator - Quantum of proof.*

The plaintiff was the registered proprietor of a piece of land which she transferred to her daughter, the defendant. On 10 March 1973, the defendant sold the land and with the proceeds bought another 10 pieces of land on 27 March 1973, 6 of which were registered in the defendant's name. The remaining 4 pieces of land were registered in the names of the defendant's brother and sister.

Four of the 6 lots of the defendant's land were sold on 2 July 1983 but registration of transfer of titles to the purchasers was rejected because the plaintiff had lodged caveats on all the 6 lots of the defendant's land. The plaintiff is contending that the defendant was holding the land as trustee for her on the ground that the defendant did not give any consideration to the earlier transfer of land from her to the defendant and she is asking for a retransfer of these pieces of land to her.

However, the defendant claimed that the plaintiff had no caveatable interest in the land as she paid nothing towards the purchase price and is applying to remove the caveats.

Held:

[1] In an application by the caveatee under s. 327 of the National Land Code, it is for the caveator to satisfy the Court that on the evidence presented to it, his claim to an interest in the property does raise a serious question to be tried; and having done so, he must go on to show that on the balance of convenience, it would be better to maintain the *status quo* until the trial of the action, by preventing the caveatee from disposing of his land to some third party.

[2] A man dealing with the registered owner is entitled to rely on the register which in the absence of notice of conflicting claims is conclusive.

[3] Equitable title to the property had passed to the purchasers and registration of the legal title was a mere formality.

[Caveats on the properties which have been sold to be removed. Money from the proceeds of sale to be deposited in Court till the outcome of the trial]

Cases referred to:
Eng Mee Yong & Ors. v. V. Letchumanan [1979] 2 MLJ 212
Temenggong Securities Ltd. & Ors. v. Registrar of Titles, Johor & Ors. [1974] 2 MLJ 45

Legislation referred to:
Rules of the High Court 1980, O. 15 r. 6
National Land Code 1965, s. 327

Other sources referred to:
National Land Code, Judith Sihombing, 1981, p. 307
Supreme Court Practice, 1985 para. 15/6/8

a *For the defendant/appellant - R. Muthu; M/s Muthu & Co.*
For the plaintiff/respondent - Choo Keng Hee; M/s Foo & Woon

JUDGMENT

Mahadev Shankar J:

b This is an interlocutory application by the defendant for the removal of caveats which have been filed by the plaintiff on 4 pieces of land. The plaintiff claims that she is the beneficial owner of these lands and that the defendant, although registered as the proprietor thereon, held the same as her trustee. The defendant disputes this and is asking for an Order that the caveats be removed *inter alia* on the ground that before the caveats were lodged, she had already sold the land to third parties who must in all the circumstances be regarded as purchasers for value without notice of the plaintiff's claims.

c

The history of the matter is as follows. The plaintiff is married to one Lim Chin Boo. The defendant is their daughter. They have a number of other children.

On 20 March 1961, the land comprised in EMR 2145 Lot 1796 in the Mukim of Jeram Batu, Pontian (hereafter referred to as Lot 1796) was purchased from a chettiar and registered in the name of the plaintiff. The plaintiff claims that she purchased this property with money provided by her father. On 3 April 1963, Lot 1796 was transferred by the plaintiff to her mother Teo Tib but on 8 July 1963 it was retransferred into the plaintiff's name.

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Subsequently it would appear that the plaintiff transferred Lot No. 1796 to the defendant for love and affection. The precise date on which this happened is not clear but it was either on 13 December 1967 or 13 December 1968 (see particulars of Search in Affidavit of Kulkeply bin Yusoff Encl. 27 para. 2).

e

On 10 March 1973, Lot 1796 was sold for RM18,500. With the proceeds, 10 pieces of land were purchased on 27 March 1973. 6 of these were registered in the name of the defendant. They were EMR 729 Lot 665, EMR 732 Lot 664, EMR 734 for Lot 666, EMR 736 for Lot 663, EMR 731 for Lot 632, and EMR 735 for Lot 631 all in the Mukim of Jeram Batu, Pontian.

f As to the remaining 4 lots, 2 each were registered in the name of another daughter and son of the plaintiff and Lim Chin Boo. Photocopies of the 6 lots registered in the name of the defendant have been exhibited and it is patently clear that she is shown on the document of title as the sole registered proprietor, free of encumbrances. There is nothing whatsoever on the document of title to suggest that the plaintiff had any interest whatsoever in these lands.

g On 2 July 1983, the defendant entered into written agreement to sell EMR 729 Lot 665, EMR 732 Lot 664, EMR 734 Lot 666 and EMR 736 Lot 663 aforesaid. For value received she executed transfer in favour of the purchasers:

1. EMR 729 Lot 665 was sold to Chang Yok Min for RM17,111.25
2. EMR 732 Lot 664 was sold to Tong Ching Watt, and Liew Kam for RM17,208.75
3. EMR 734 for Lot 666 was sold to Chong Chu Min for RM17,013.75 and

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4. EMR 736 for Lot 663 was sold to Lee Eng Kuan for RM17,647.50.

After payment of the consideration aforesaid the transfer forms were duly executed and stamped but when they were presented to the Land Office at Pontian for registration the transfers were rejected because on 7 July 1983, the plaintiff had filed caveats against EMR 731 Lot 632 and EMR 735 Lot 631 also in the Mukim of Jeram Batu.

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On 15 August 1983 the defendant caused notices to be issued to the plaintiff for the removal of the caveats. On 27 September 1983, the plaintiff filed this action in which she claimed for a declaration that the defendant held all the 6 lots as trustee for the plaintiff and for an Order restraining the defendant from disposing of the said lot and the further order that the same be transferred to the plaintiff.

On 29 September 1983 the plaintiff applied for and obtained an order for the extension of the caveat on the said lot until the final disposal of this action or further order.

Such order was made on 6 October 1983 and after the same was served on the defendant, the latter applied on 10 November 1983 for the caveats to be removed.

A number of affidavits were filed by both parties before the application was heard in Open Court on 10 and 12 December 1983 when lengthy submissions were made and numerous authorities were cited.

In a nutshell, the plaintiff's case is that the defendant contributed nothing towards the purchase price of the said lots and that as the entire consideration had moved from the plaintiff, the defendant held the land on a resulting trust for the plaintiff.

Each of the purchasers of the 4 lots 665, 664, 666 and 663 aforesaid have filed affidavits in this Court in which they have averred that they are *bona fide* purchasers for value without notice and that by virtue of the consideration given to the vendor and received by the defendant they claim to be beneficial owners of the property as from the moment the memoranda of transfer were executed in their favour. From that point on, it is their contention that the defendant was holding the property in trust for them and consequently as a matter of law there was nothing left for the plaintiff to caveat on 7 July 1983.

Although these purchasers are not parties to this action or the present application, Mr. Muthu who acts for the defendant has given notice to the Court that he is also acting for the purchasers. He is adamant that the caveat as against these 4 properties must go.

As for the remaining two properties EMR 731 Lot 632 and EMR 735 Lot 631, he has given notice that the defendant is amenable to allowing the caveats to remain until the disposal of this action.

But for the reasons which now follow, it is the contention of the defendant that the plaintiff has no caveatable interest in respect of any of the 6 lots aforesaid.

In his affidavit, Mr. Lim Chin Boo claims that Lot 1796 was purchased by him. Of the RM700 required, he paid RM500 himself and borrowed RM200 from the plaintiff's relatives which he claimed has since been repaid. Although the land was registered in the name of the plaintiff, Lim Chin Boo appears to claim that he was the beneficial owner thereof. He managed the property and the profits therefrom. Subsequently, he got into business difficulties and was adjudicated a bankrupt in 1968.

The suggestion is that the transfer of Lot 1796 by the plaintiff to the defendant was to avoid embarrassment from Lim Chin Boo's creditors. Subsequently, when Lot 1796 was sold and the 10 pieces aforesaid purchased on 27 March 1973, Mr. Lim Chin Boo claims that he continued to work and managed the property, paid the quit rents and distributed the profits. The title deeds were all in his custody. In 1981 he fell ill with cancer and as money was required for medical expenses he discussed the matter with the defendant and the defendant agreed to sell 4 of the 6 lots registered in her name to raise money required for the medical

expenses. As the plaintiff did not pay any part of the purchase price for the 10 lots or the quit rent, Lim Chin Boo claims that in the circumstances the plaintiff has no caveatable interest in the land. The defendant is the registered proprietor. In her affidavit (encl. 18) she fully supports the arguments of Lim Chin Boo. She said that the plaintiff was not gainfully employed nor did she inherit any money. It is left to be implied that the plaintiff could not therefore have purchased Lot 1796. She confirmed that on 2 July 1983 she sold the 4 lots aforesaid and received in full consideration therefor whereupon she executed the memoranda of transfers in favour of the respective purchasers. She disputes the plaintiff's claim that the plaintiff paid the quit rents and says that it was her father Lim Chin Boo who did so.

It is common ground that the relationship between the plaintiff and her husband, Lim Chin Boo has not been cordial for some years now.

She also contends that if the caveats are not removed she could be sued by the purchaser of the 4 properties for specific performance and/or damages and may not be able to finance the medical expenses required by her father.

The law is well settled that in an application by the caveatee under s. 327 of the National Land Code, it is for the caveator to satisfy the Court that on the evidence presented to it, his claim to an interest in the property does raise a serious question to be tried; and having done so, he must go on to show that on the balance of convenience, it would be better to maintain the *status quo* until the trial of the action, by preventing the caveatee from disposing of his land to some third party; see *Eng Mee Yong & Ors. v. V. Letchumanan* [1979] 2 MLJ 212 at p. 215.

But as regards the 4 lots which have been sold, what the plaintiff is seeking to do in this case is not to maintain the *status quo* as it stood on 7 July 1983 when she filed her caveats but to restore the *status quo ante* 2 July 1983 when the defendant sold those 4 lots to their respective purchasers.

The affidavits filed by these purchasers to the effect that they are *bona fide* purchasers without notice of the plaintiff's claim has not been disputed. The sale transaction was completed on 2 July 1983 immediately after transfers were executed and the moneys received. Equitable title to the properties had passed to the purchasers and the registration of the legal title was a mere formality. In these circumstances it is my view that *Temenggong Securities Ltd. & Ors. v. Registrar of Titles, Johor & Ors.* [1974] 2 MLJ 45 is applicable. There too the vendors having parted with their interests in the lands to the appellants, were held to be their trustees and had no interest in the land over which the valid caveat could be lodged.

Regardless of the merits or otherwise of the plaintiff's claims it is my view that caveats filed over EMR 729, 732, 734 and 736 for Lots 665, 664, 666, and 663 in the Mukim of Jeram Batu should be removed forthwith and I do so order.

It is trite law that a man dealing with the registered owner should not be required to ascertain if he is dealing with a trustee or whether the transaction is a breach of a trust. He should be entitled to rely on the register which in the absence of notice of conflicting claims is conclusive.

If indeed the plaintiff was the beneficial owner of these properties, there were a variety of ways in which she could have protected her interests. These are listed in the *National Land Code* by Judith Sihombing (1981) at p. 307. Nothing of the sort was done and it is too late to turn the clock back so far as these 4 lots are concerned.

In the case of *Eng Mee Yong & Ors. v. Letchumanan*, the Privy Council observed that to say that the caveator, in order to maintain his caveat, must satisfy the Court that on the balance of probabilities, his claim will succeed, is to put the burden of the caveator too high. It is enough that the evidence presented raises a serious question to be tried.

But the Privy Council also indicated in *Eng Mee Yong's* case that it would be putting the burden on the caveator too low if it was held to suffice that the caveator had commenced proceedings against the caveatee to enforce his claim to the interest in the land coupled with a bare assertion in an affidavit that he was entitled to that interest unsupported by any disclosure and verification upon oath of the facts upon which his claim was based.

Although there is no hard evidence in the plaintiff's affidavit of any physical movements of money from her or her father relating to the purchase of Lot 1796 in the first instance, the substance of her affidavits have gone beyond a bare assertion. There is no doubt also that the defendant did not herself produce any money for the purchase of the properties which are the subject matter of this dispute. If the money did come from Lim Chin Boo then the added factor to take into account is that since 1968 he has been a bankrupt and I have been informed from the parties that he is still a bankrupt.

In these circumstances, it is my view that the proper order that this Court should make is that the money which represents the proceeds of the sale of the 4 lots aforesaid amounting to RM68,981.25 less any proper Solicitor's charges incurred with regard to the transfers should be deposited in Court forthwith to await the outcome of the trial. If the money is still in the hands of the defendant's Solicitors there should be no difficulty in complying with this Order. But in the event that the money is not deposited, I direct that the plaintiff be entitled to subject the defendant to a proper enquiry as to what has become of these moneys and to such further order as the justice of the case may require.

As to EMR 731 for Lot 632 and EMR 735 for Lot 631, Mr. Muthu Counsel for the defendant had indicated that the caveats may remain until the trial of this action and I agree.

Since Mr. Lim Chin Boo is an undischarged bankrupt, I consider it proper that the Official Assignee be invited to consider whether he should intervene in this action. Reference may be made in this context to O. 15 r. 6 of the Rules of the High Court and the Commentary in the *Supreme Court Practice* 1985 para. 15/6/8.

Finally I order that the costs of these proceedings be taxed and paid by the plaintiff to the defendant.

Also found at [1985] 1 CLJ 466